

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Michael D. Woods)	
)	C.A. No. 08-06-0112AP
Plaintiff-Below,)	
Appellant,)	
)	
v.)	
)	
Unisex Hair Palace,)	
)	
Defendant-Below,)	
Appellee.)	

August 26, 2009

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Pro Se

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ORDER AND DECISION ON MOTION TO DISMISS

Plaintiff-Below, Appellant Michael D. Woods (“Plaintiff”), has filed a civil appeal with this Court seeking a trial *de novo* of a final order of a Justice of the Peace Court pursuant to 10 *Del. C.* §9571. The Defendant-Below, Appellee Unisex Hair Palace (“Defendant”), has moved to dismiss the appeal for lack of jurisdiction. It is the Defendant’s contention that the court does not have jurisdiction of the appeal because the Plaintiff failed to file his complaint in a timely manner.

The Court hereby grants the Defendant's motion to dismiss the Plaintiff's appeal for lack of jurisdiction because the Plaintiff failed to file a complaint in a timely manner as required by Court of Common Pleas Civil Rule 72.3(a).

FACTS

The Plaintiff filed a debt action against the Defendant in Justice of the Peace Court for hair cut that went bad. After a hearing for this matter, the Justice of the Peace Court entered a judgment for the Defendant on May 22, 2008. On June 6, 2008, the Plaintiff filed an appeal of the court below's judgment for the Defendant with this court pursuant to 10 *Del. C.* §9571 seeking a trial *de novo*. His appeal did not contain a complaint in the proper format as required by Court of Common Pleas Civil Rule 8(a), and was rejected. The Plaintiff then filed a complaint in proper form with the Court on June 25, 2008. The Defendant has now filed a Motion to Dismiss the Plaintiff's appeal for lack of jurisdiction on the grounds that the Plaintiff's complaint was not filed on time pursuant to Court of Common Pleas Civil 72.3¹.

DISCUSSION

Civil Appeals from Justice of the Peace Court to the Court of Common Pleas are governed by 10 *Del. C.* §9571. If any party fails to comply with the statute's dictates, the Court of Common Pleas has no jurisdiction over the appeal. *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969). Under 10 *Del. C.* §9571, a party has a right to appeal any final order, ruling, decision or judgment of Justice of the Peace Court in a civil action

¹ The Defendant's Motion to Dismiss also contained other grounds. However, since the motion has been granted for the Plaintiff's failure to file a proper complaint on time, the Defendant's other grounds for dismissal will not be discussed.

to the Court of Common Pleas. “The appeal [must] be taken within 15 days of the final order, ruling, decision or judgment.” 10 *Del. C.* § 9571. Pursuant to 10 *Del. C.*

§9571(d), “[t]he Court of Common Pleas shall establish [the] appeal procedures...”

The procedures for an appeal from Justice of the Peace Court are governed by Court of Common Pleas Civil Rule 72.3. Pursuant to Civil Rule 72.3, in order to perfect an appeal from Justice of the Peace Court to the Court of Common Pleas, the Plaintiff must file a complaint with the notice of appeal within fifteen days from Justice of the Peace Court’s entry of the final judgment, order or disposition.

In the present case, the final judgment of the Justice of the Peace Court from which the Plaintiff appealed was issued on May 22, 2008. He filed his appeal on June 6, 2008, which was within the 15 day time limit proscribed by Delaware statute and Court of Common Pleas Civil Rules to file a civil appeal. However, he did not perfect the appeal at that time because he failed to file a complaint in the proper form as required by Court of Common Pleas Civil Rule 8(a). He did not file such a complaint until nineteen days later, on June 25, 2008, which was a full month after the final judgment from which he was appealing had been entered by the Justice of the Peace Court. Therefore, the Plaintiff’s appeal for this matter was not perfected in a timely manner and the Court must dismiss it for a lack of jurisdiction.

CONCLUSION

As a result of the Court’s finding of fact, which is based upon the entire record, and the Court’s above-referenced conclusions of law, the Plaintiff’s appeal of the final order of the Justice of the Peace Court for this action is dismissed with prejudice for a

lack of jurisdiction. The Plaintiff failed to perfect his appeal within fifteen days as required by 10 *Del. C.* §9571 and Court of Common Pleas Civil Rule 72.3.

IT IS SO ORDERED THIS 26th DAY OF AUGUST, 2009.

**CHARLES W. WELCH
JUDGE**